IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.136 OF 2006

Shri Epitacao Paes .... Petitioner

V/s.

Shri Dina Shirodkar (since deceased) & Ors. .... Respondents

Mr. Nitin Sardesai for the petitioner.

Mr. S.D. Lotlikar, senior advocate for respondents 1 to 4 and 6 to 14.

Ms. Rakhi Chodankar, AGA, for respondents 17 and 18.

ALONG WITH

WRIT PETITION NO.219 OF 2006

Shri Dina Shirodkar (since.... Petitioners deceased) and others.

V/s.

Shri Epitacao Paes. .... Respondents

Mr. S.D. Lotlikar, senior advocate with Ms. S. Rao for the petitioners.

Mr. Nitin Sardesai for respondent 1.

Ms. Rakhi Chodankar, AGA, for respondents 4 and 5.

CORAM : SMT. RANJANA P. DESAI, J.

DATED : 29TH JUNE 2006.

P.C.

1. In both these writ petitions, the petitioners have challenged order dated 21/3/2000 passed by the Joint Mamlatdar – I of Tiswadi Taluka, Panaji, in Case No.TNC/JM-I/DEC/SAN-TAL/1/98 and order dated 27/10/2005 passed by the Deputy Collector & S.D.O., Tiswadi Taluka, Panaji in Case No.TNC/DYCL/APPL/13/2000. Writ Petition No.136 of 2006 is filed by the original opponent and Writ Petition No.219 of 2006 is filed by the heirs of the original applicant. (For the sake of brevity, the petitioner in Writ Petition No.136 of 2006 is referred to as "the petitioner" and the petitioners in Writ Petition No.219 of 2006 are referred to as "the respondents").

2. I have heard Mr. Sardesai, the learned counsel appearing for the petitioner and Mr. Lotlikar, the learned counsel appearing for the respondents.

3. The learned counsel for the petitioner contended that whereas the learned Deputy Collector on merits held in the petitioners' favour, in the operative part of the judgment, he has passed a restrain order against him and, therefore, the said restrain order deserves to be set aside. The learned counsel for the respondents contended that in the impugned order there is no indication that the three principles underlying grant or refusal of temporary injunction viz. (a) whether the person praying for temporary injunction has made out a prima facie case; (b) whether balance of convenience is in his favour and (c) whether he will suffer irreparable loss and/or injury if the temporary injunction is refused, were present in the mind of the learned judge or not. He contended that the impugned order, therefore, deserves to be set aside.

4. In the facts and circumstances of this case without expressing any opinion on the merits of the case and rights of the parties, in my opinion, the matter needs to be remanded to the Deputy Collector & S.D.O., Panaji, for the reason that the order really does not indicate that the abovementioned principles were considered by him while passing the impugned order. In my opinion, it is also necessary to remand the matter to ensure clarity. Hence, I pass the following order :

5. Case No.TNC/DYCL/APPL/13/2000 is remanded to the Deputy Collector, S.D.O., Panaji, with a direction that he shall deal with the matter afresh after giving hearing to the parties and after considering the principles underlying grant or refusal of temporary injunction. I make it clear that I have not expressed any opinion on the merits of the case. All contentions of both sides are kept open.

6. Both the writ petitions are disposed of in the

aforestated terms.

(SMT. RANJANA DESAI, J.)